NO. 83-1082

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

RICHARD J. ELROD, Sheriff of Cook County, et al.,

Petitioners,

-vs-

DAN DURAN, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

RUTHANNE DeWOLFE
RICHARD JAY HESS
LESLIE ANN JONES
ROBERT E. LEHRER
Legal Assistance Foundation
of Chicago
343 South Dearborn Street
Chicago, Illinois 60604
(312) 341-1070

Attorneys for Respondents

QUESTIONS PRESENTED

1. Whether a federal district court abused its discretion in refusing to modify a one year old Consent Decree that had resolved an eight year old jail conditions suit?

2. Whether a federal district court abused its discretion in remedying continuing and substantial noncompliance with a Consent Decree?

PARTIES TO THE PROCEEDINGS

Plaintiffs, the respondents here, are Dan Duran, Bruce Johnson, Robert O'Brien, Al Sana Caruth, John Norman, and Drexel Holland, individually and on behalf of all others similarly situated. Defendants, petitioners here, are identified in the Petition for Certiorari 1 n* and 2 n*.

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STATUTORY PROVISION INVOLVED */

Federal Rule of Civil Procedure 60 provides, in relevant part:

> Rule 60. Relief from Judgment or Order
>
> * * *
>
> (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
>
> * * *
>
> (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
>
> (6) any other reason justifying relief from the operation of the judgment.
>
> * * *

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*/ Petitioners cite U.S. CONST. amend XIV, § 1 and 42 U.S.C. § 1983, as the constitutional and statutory provisions this case involves, within the meaning of Sup. Ct. R. 34.1(f). Respondents disagree, see Argument, infra passim.

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STATEMENT OF THE CASE

1. Plaintiffs ("respondents") are a class of all pretrial detainees at the Cook County Jail ("Jail") (Complaint 10/11/74; Order Certifying Class 6/23/75). 1/ Petitioners are various Cook County, Illinois officials with responsibility for the Jail (Petition for Certiorari ("Pet.") 1 n.* and 2 n.*). Respondents claimed (Second Amended Complaint 9/7/76) that petitioners were violating their rights under the eighth and fourteenth amendments of the United States Constitution by, inter alia:

> (a) Forcing them to live in overcrowded conditions where individuals had to sleep less than two feet apart, without bedding, on the concrete floors of hallways and dayrooms (id. at ¶ 13(A)(1),(3)).

1/ The record in this case is currently lodged with the Clerk of Court, Northern District of Illinois, Eastern Division. Except as noted at nn. 3 and 5 infra, citations to that record here include identification of the document referred to, and the date it was filed with the court, or entered upon the docket, as shown on the district court docket sheet.

(b) Failing to provide them essential items of personal hygiene such as soap, clean clothes, and bedding for days and weeks at a time (id. at ¶ 13(E)).

(c) Forcing them to live in quarters without working plumbing, proper ventilation, and lighting (id. at ¶ 13(A)(6) and (D)(2)).

(d) Restricting them to sunless dayrooms adjoining their cells or dormitories, and failing to provide regular outdoor physical activity (id. at ¶ 13(D)).

2. From 1977 through 1980, the parties engaged in extensive discovery in preparation for trial (R. Docket entries 2/11/77 - 6/24/80).

3. After prolonged and intensive settlement negotiations (R. Docket entries 9/23/80 - 4/5/82), the parties agreed to the entry of a consent decree resolving all of respondents' claims (Consent Decree 4/9/82 ¶ E). The parties signed the Consent Decree on February 4, 1982 (Order Providing Notice to Class 2/4/83). It required petitioners to, inter alia: provide adequate exercise periods (Consent Decree 4/9/82 ¶ 8(A), (B), (C), (D), (E)); provide food service that meets minimal nutritional and sanitary standards (id. at ¶ 4(A)(13)); provide adequate environmental health conditions (id. at ¶¶ 5 and 10); provide a permanent bed for every inmate in areas designed as sleeping quarters (id. at ¶ 2(A)); limit the number of people housed in each living unit (id. at ¶ 2(A)(1), (2), (3)); 2/ and not double bunk in Division I (id. at ¶ 2(A)(1)) (double bunking was permitted in the other Divisions (id. at ¶ 2(A)(3)).

4. Division I is the oldest division at the Jail (Master Plan Cook County Department of Corrections 4/2/75 at 5-6), a "Bastille-like structure" (id. at 6) the petitioners'

2/ The limits are imposed by reference to how persons must be housed in each Division of the Jail: 52 persons per Dormitory in Division II, double bunking in Divisions III, IV, V, and VI, and single bunking in Division I (Consent Decree ¶ 2(A)(1), (2), (3)). The precise population limit of the Jail can therefore be calculated by applying these standards to the actual physical facilities in each Division.

"Master Plan" for the Jail suggested might reasonably be demolished (id. at Exhibit 1). In the litigation, respondents sought demolition of that structure or its radical renovation, arguing and introducing evidence to establish that the structure was unfit for human habitation (Motion for Preliminary Injunction and Supporting Memorandum 7/3/78). As part of the Consent Decree, however, respondents agreed to the continued use of Division I, provided petitioners renovated it and did not double bunk there (Consent Decree 4/9/82 ¶ 2(A)(1)). The renovations agreed to were less extensive than those respondents originally sought (compare Motion for Preliminary Injunction 7/31/78 with Consent Decree 4/9/82 ¶ 2(A)(1)). Respondents also sought in the litigation to eliminate the use of dormitories at the Jail (Second Amended Complaint 9/7/76 ¶ 13(A)(3), (4), (5), and (6)); but agreed in the Decree to their continued use (Consent Decree 4/9/82 ¶ 2(A)(2)).

5. The district court approved the Consent Decree on April 9, 1982 (Consent Decree 4/9/82) and appointed John Howard Association officials ("Monitors") to monitor petitioners' compliance with it (id. at ¶ 12(B)). Shortly thereafter, respondents discovered that petitioners had failed to end their practice of having detainees sleep on concrete dayroom floors throughout the Jail (Plaintiffs' Reply to Defendants' Response to Petition for Rule to Show Cause, Exhibit C 12/13/82; Director's Daily Log ("Dir. Logs") 5/9/82 3/). Respondents

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3/ The Director's Daily Logs are daily jail statistics filed with the court that show the number of detainees and beds in each division of the Jail. They are identified here by reference to the day the log describes rather than the date filed with the court.

On April 9, 1982, the day the Consent Decree was entered, there were 313 detainees sleeping on the dayroom floors (Dir. Log 4/9/82). On July 9, 1982, there were 300 detainees sleeping on the floors (Dir. Log 7/9/82).

objected to this violation of the Consent Decree and attempted, through a series of meetings with petitioners, to alleviate this condition (Plaintiffs' Reply to Defendants' Response to Rule to Show Cause, Exhibit C 12/13/82).

6. On October 9, 1982, the Monitors reported to the Court that there was substantial non-compliance with virtually all aspects of the Consent Decree and that overcrowding at the Jail -- hundreds of detainees were sleeping on the concrete Jail floors without, in many cases, mattresses or blankets -- was the primary cause of the noncompliance (Interim Compliance Report 10/21/82). 4/ Specifically, they found that:

> (a) On September 27, 1982, there were 436 detainees sleeping on the dayroom floors, "large numbers without mattresses or blankets" (id. at 3). Most of the detainees sleeping on the dayroom floors were being held in default of the lowest bonds, $35 to $150 (id. at 4);
>
> (b) Petitioners failed to provide such personal hygiene items as soap, towels, clean clothing, and bedding for many detainees for as long as 20 days (id. at 6);
>
> (c) Petitioners failed to implement the physical exercise program set forth in the Consent Decree (id. at 8);
>
> (d) The Jail contained stopped-up sinks, broken light fixtures and inoperative toilets (id. at 10);
>
> (e) "The critical issue of overcrowding has to be addressed and solved to hold any promise of compliance in the other areas" (id. at 12).

7. On November 8, 1982, respondents moved for issuance of a rule to show cause why petitioners should not be held in contempt for violating the Consent Decree (Pet. for Rule to Show Cause 11/2/82). Respondents later moved for remedial relief,

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4/ The Jail overcrowding that had prevailed the day the Consent Decree was entered (n. 3, supra) thus persisted for the next six months. It persisted, in fact, until July 22, 1983, when the court of appeals affirmed the district court order petitioners seek review of here, and vacated its previous stay of that order (Dir. Logs 4/9/82 - 8/2/83). From April 1982 through July 1983, there were, at a minimum, 150 detainees sleeping on the dayroom floors every night (Dir. Logs 4/9/82 - 8/2/83).

pursuant to 28 U.S.C. § 2202, as an alternative to contempt sanctions (Plaintiffs' Reply to Defendants' Response to Petition for Rule to Show Cause 12/13/83).

8. At the November 8, 1982, hearing on their alleged noncompliance with the Consent Decree, petitioners accepted the Monitor's factual findings as "accurate," and the district court requested them to propose workable remedies (Trans. of Proceeding, 11/8/82 5/ at 4, 5).

9. On November 15, 1982, the Director of Medical Services for the Jail reported to the Monitors that the effects of overcrowding at the Jail were:

> (a) Increased suicides, psychoses and psychoneuroses, and inability to treat many mentally ill detainees (Plaintiffs' Reply to Defendants' Response for Rule to Show Cause, Exhibit D 12/13/82).
>
> (b) "Increased rates of illness, medical complaints, sexual assaults, trauma ... epidemics of body, head and pubic lice ...." The most serious infestations of lice occurred in Division II, the most overcrowded division (id.); and
>
> (c) Substantial increase in physical assaults on both guards and inmates at considerable cost to the Jail (id.).

10. At petitioners' request, the district court conducted a hearing on December 23, 1982, at which representatives of state and city agencies and administrative departments, invited by the petitioners, suggested solutions to the problem of overcrowding at the Jail (Trans. of Proceedings 12/23/82).

> (a) Superintendent of the Chicago Police Department Richard Brezczek stated that his agency supported reducing the Jail population by increased use of recognizance bonds instead of cash bonds (id. at 14-18);
>
> (b) Director of the Illinois Department of Corrections Michael Lane recommended placing a maximum limit or "cap" on the number of persons who could be housed at the Jail (id. at 25);
>
> (c) The Monitors recommended a cap on the Jail

5/ Transcripts of Proceedings are identified by reference to the date of the hearings transcribed.

population (id. at 3).

Petitioners offered no solutions of their own and expressed no opposition to the proposals of the state and city officials, including the proposal to release detainees on recognizance (id. at 23, 32-36).

11. After the December 23rd hearing, the district court conducted further hearings on the propriety of the type of explicit court order limiting the Jail population that the state and local officials had recommended (Trans. of Proceedings 1/3/83, 1/14/83). At the first of these hearings, on January 3, 1983, petitioners acknowledged that because of overcrowding at the Jail, they were not complying with the Consent Decree and acknowledged that conditions at the Jail were inhumane (Trans. of Proceedings 1/3/82 at 6). But petitioner opposed the imposition of contempt sanctions as ineffective to secure compliance with the Consent Decree.

12. Under the terms of the Consent Decree, the nominal capacity of the Jail was 4,677 inmates (Defendants' Response to Rule to Show Cause 12/1/82 at 1). As petitioners also acknowledged to the district court, however, there were ordinarily only 4,500 beds actually available at the Jail (Trans. of Proceedings 1/21/83 at 6). Thus, the Jail's actual capacity under the Consent Decree -- which required that every inmate have a bed in a designated sleeping area (e.g. a cell) (Consent Decree 4/9/82 ¶ 2(A) 6/) -- was 4,500; and on January 21, 1983, the district court entered an order directing petitioners not to permit the population of the Jail to exceed that figure.

6/ Paragraph 2(A) of the Consent Decree provides:

> Each pre-trial detainee shall have one permanent bed in a cell. No pre-trial detainee shall be housed where inmates are required to sleep on the floor, or on a mattress on a floor, or in any area not designated as sleeping quarters. (Consent Decree 4/9/82 ¶ 2(A)).

Petitioners never appealed that order.

13. On February 11, 1983, petitioners submitted a January 31, 1983, report by their consultant, the National Institute of Corrections ("NIC") of the United States Department of Justice (Defendants' Status Report, Exhibit 3 2/11/83). Petitioners had hired NIC to evaluate the overcrowding problem at the Jail and to propose solutions. NIC reported "[s]ignificant reductions could be safely made in jail population" (id. at 30). It outlined a series of recommendations to achieve those reductions, including the increased use of release on recognizance (id.).

14. On February 11, 1983, petitioners reported that several hundred detainees were sleeping on the dayroom floors (Defendants' Status Report 2/11/83). Petitioners also stated that they were considering construction of an additional 500-bed jail facility (id. at 5).

15. Also on February 11, petitioners filed a motion, pursuant to Fed. R. Civ. P. 60(b), that sought to modify ¶ 2(A)(1) of the Consent Decree to allow two persons per cell in Division I (Defendants' Motion for Modification of Consent Decree 2/11/82). That provision prohibited double bunking there (Consent Decree 4/9/82 ¶ 2(A)(1)).

16. The district court ultimately denied petitioners' motion (Order 3/21/83). Based on the evidence previously submitted, it stated that to modify the Consent Decree would represent a "step backward" from the January 25th order: it would increase the Jail population and frustrate any attempts to ameliorate those conditions at the Jail -- substantially all of which were caused by overcrowding (see ¶ 6, supra) -- that constituted continuing violations of the Consent Decree (Trans. of Proceedings 3/2/83 at 14-15; Memorandum Opinion and Order 3/22/83).

17. On March 2, 1983, petitioners reported to the court that several hundred detainees were sleeping on the dayroom floors every night (Defendants' Status Report 3/1/83). The district court suggested that petitioners devise a means for releasing detainees in order to reduce the population and asked the parties to submit criteria for release at the next hearing (Trans. of Proceedings 3/2/83 at 15-16).

18. The respondents subsequently submitted their proposed criteria for reducing the population -- release persons with the lowest bonds first (Plaintiffs' Proposed Criteria 3/8/83). Petitioners did not submit criteria; but neither did they oppose the idea of the district court directing them to release detainees to relieve overcrowding (Defendants' Status Report 3/9/83).

19. On March 22, 1983, petitioners reported to the court that there were 240 detainees sleeping on the dayroom floors (Defendants' Status Report 3/22/83). On the same date, the district court entered the order of which review is now sought. That order ("enforcement order") provided that if petitioners Elrod and Hardiman could not comply with the Decree by April 15th, then they should release on recognizance that number of detainees sufficient to provide each remaining detainee in the Jail a bed in a designated sleeping area, as provided in the Consent Decree (Order 3/22/82). The enforcement order further provided that those detainees released first, if release was required, should be those held in default of the lowest bail (Order 3/22/83).

20. On March 22, 1983, petitioners informed the court that the Cook County Board had, the previous day, authorized the prompt construction of an additional jail facility to house 500 inmates, which would take six to eight months to build (Defendants' Status Report 3/22/83). Construction of this facility

still has not begun (Pet. 3).

21. On March 30, 1983, petitioners appealed the March 22nd district court order to the court of appeals, which unanimously affirmed that order on July 22, 1983. Duran v. Elrod, 713 F.2d 242 (7th Cir. 1983); Pet. App. A.

22. Petitioners filed a petition for rehearing with a suggestion for rehearing in banc. On October 6, 1983 that petition was denied, no judge requesting a vote, and all judges on the original panel voting to deny rehearing (App. A hereto).

ARGUMENT

I. INTRODUCTION

Respondents filed this jail conditions suit in 1974 (Statement of Case ("Stmt.") ¶ 1). 7/ In April 1982, after 8 years of litigation, the district court approved a comprehensive Consent Decree that resolved all of respondents' claims (Stmt. ¶ 3). The Decree was the product of two years of intensive negotiations (id.), and its provisions embodied numerous concessions by both sides (id.). See United States v. Armour & Co., 402 U.S. 673, 681 (1971). The most important provisions of the Decree were the ones intended to limit severe overcrowding at the Jail (Consent Decree 4/9/82 ¶ 2). Both parties recognized that compliance with these provisions was essential if the conditions that gave rise to the lawsuit were to be corrected; they also recognized that overcrowding at the Jail frustrated petitioners' ability to comply with other provisions of the Consent Decree (Stmt. ¶¶ 6, 8).

7/ Respondents, in their Argument, cite principally to the Statement of the Case, rather than directly to the record. The Statement cites to the Record (see n.1, supra).

The court of appeals affirmed a March 1983 district court order denying petitioners' Fed. R. Civ. P. 60(b) motion to modify the April 1982 Consent Decree (Pet. App. A). The requested modification would have permitted the very overcrowding that petitioners themselves -- the officials charged with the Jail's administration -- had agreed to correct. The court of appeals also affirmed the district court's subsequent enforcement order which, once implemented, cured petitioners' long-standing and substantial noncompliance with the Decree (see n. 4, supra).

The record in this case raises unremarkable questions concerning the exercise of a district court's discretion in refusing to modify a consent decree and in remedying noncompliance with it. It is not a record from which petitioners can prepare a persuasive petition for certiorari. So, struggling against a factual record and a court of appeals' decision that can hardly be hidden, they suggest to this Court a different case than the one actually presented.

II. THE COURT OF APPEALS' DECISION PRESENTS NO IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

A. Whether The Court Of Appeals Properly Affirmed The District Court's Refusal To Modify The Consent Decree Presents No Question Of Federal Law Worthy Of This Court's Review.

Petitioners invoke no less than three of the "special and important reasons" for granting certiorari set forth in Sup. Ct. R. 17.1. The one they urge most vigorously, however, is that the decision of the court of appeals presents an "important question of federal law which has not been, but should be, settled by this Court" (id. at 17.1(c); see Pet. 14-20).

Petitioners' argument is that the enforcement order is improper because modification of the Consent Decree was the required remedy. Indeed petitioners' view appears to be that if the district court properly exercised its discretion in refusing to modify the Decree, then the court of appeals affirmance of the enforcement order was correct (Pet. 4). Thus, they concede that the motion to modify the Decree to permit double-bunking should have "preclude[d] the ... release order" (id. at 16). And they state that the enforcement order is "wrong" (id. at 18), because it "ignored other available ... remedies for the enforcement of the Consent Decree" (id.). But the "other ... remedies" turn out to be just the "double bunking ... rejected by the district court" when it refused to modify the Decree (id. at 18, 20). The relationship between the two orders that petitioners press makes correct their suggestion (Pet. 17-18 n. **) that whether the district court erred in refusing to modify the Consent Decree is a question "fairly included," Sup. Ct. R. 21.1(a), within any question presented about the enforcement order (Pet. i).

While necessarily presented, this question is not, however, worthy of plenary review. In affirming the district court's refusal to modify the Consent Decree, the court of appeals applied those well established principles governing modifications of consent decrees that Justice Cardozo first formulated in United States v. Swift & Co., 286 U.S. 106, 114-15 (1932), and which scores of decisions since have developed. See, e.g., cases cited at Pet. App. 8a-10a. Petitioners do not seriously question these principles or otherwise suggest any reasons why they should be reexamined; and respondents know of no decision of any court of appeals, much less any of this

Court, that does so either. 8/

Unable to mount any legitimate attack against these standards, or to suggest why this Court should now want to re-examine them, petitioners are reduced to quarreling with the court of appeals' refusal to accept their explanation of why, under the facts of the case, they meet them (Pet. 15-16, 18). 9/ Even a strong argument concerning a lower federal court's understanding of the facts of a particular case is not, however, one that ordinarily prompts this Court's plenary review, under the Sup. Ct. R. 17 standards. See General Talking Pictures Corp. v. Western Electric Co., 304 U.S. 175, 178 (1938).

8/ In asserting that this case raises a "subsidiary issue" of "whether the district court properly applied Rule 60(b) law" (Pet. 17-18), petitioners do cite, without explanation, Washington v. Penwell, 700 F.2d 570, 574 (9th Cir. 1983), De Filippis v. United States, 567 F.2d 341, 343-46 (7th Cir. 1977) and Mayberry v. Maroney, 529 F.2d 332, 335-36 (3d Cir. 1976) suggesting, that these cases are inconsistent with the court of appeals decision, or otherwise invite review of that court's application of the Rule 60(b) standards here. But the court of appeals itself cited De Filippis and a later opinion in Mayberry, 558 F.2d 1159 (3d Cir. 1977) in support of its decision (Pet. App. 8a-10a). And Penwell reaffirmed the principle that Fed. R. Civ. P. 60(b) relief from a consent decree was "extraordinary," 700 F.2d at 574, although it permitted modification of a provision of the decree there because a failure to do so in the court's view "would run afoul of the state's sovereign immunity" and so be constitutionally "impermissible" (id.). But petitioners do not argue here that the no double bunking provision they sought to modify is unlawful. All that remains of petitioners' passing dispute with the court of appeals' understanding of the law governing modification of consent decrees (Pet. 17-18 n. **) is some name-calling.

9/ This challenge, to be sure, impliedly urges a marked relaxation of the Swift standards which do not require, if they even permit, the modification sought here (see pp. 13-14, infra). Respondents note only that the relaxation petitioners thus seek would make the resolution of cases by consent extraordinarily unlikely; and those consent resolutions that are achieved fragile indeed, subject to the parties' repeated efforts to modify those terms they find no longer convenient.

Petitioners' challenge, moreover, to the court of appeals' application of the Swift standards to the facts of this case is weak indeed. They simply present, as they did before the court of appeals, the increase in jail population after April 1982 10/ (when the Consent Decree was entered) as the justification for double bunking (Pet. 7-9, 15-16). Under Swift and its progeny, one relevant inquiry in considering whether a consent decree should be modified is whether the "dangers" the consent decree was meant to address "have become attenuated." Swift, 286 U.S. at 119. Petitioners can hardly show that the dangers this Consent Decree was meant to address (see Stmt. ¶ 13 and p. 9, supra) "have become attenuated" by showing that overcrowding at the Jail had become worse.

Another relevant inquiry is whether there are any unanticipated or "unforeseen conditions" resulting in a "grevious wrong" to the party seeking the modification. Swift, 286 U.S. at 119. But petitioners' tale of "unforeseen conditions" is false. Overcrowding was a chronic problem, not one reflecting any unforeseen change in circumstances after the entry of the Decree. The Jail population and the extent of overcrowding were very nearly the same in March 1983, when the district court denied the motion to modify the Consent Decree, as they were almost a year before, when that Decree was signed and approved.11/

10/ Petitoners' graphs (Pet. 7-8) are misleading because they run only through 1982. The Director's Daily Logs show that, from January through March of 1983, the population of the Jail steadily decreased to a level virtually the same as those prevailing in April 1982 (compare Dir. Logs 1/6/83-3/25/83 with Dir. Log 4/9/82). That level persisted until July, 1983, when the court of appeals vacated its stay of the enforcement order (Dir. Logs 3/25/83-8/2/83).

11/ During February, March and April 1982, the Jail populaion hovered between 4400 and 4600 (Pet. 7), with 313 inmates

(footnote continued on page 14)

Over the course of a full year, and months after the influx of the new detainees on which the petitioners predicate their argument that the Consent Decree should have been modified, hundreds of detainees continued to sleep on the floor. But not until their own noncompliance with the Decree had occasioned the district court's scrutiny of their conduct and the threat of remedial orders, many months after the increase in population, did petitioners move to modify the Decree. Petitioners merely use the increased Jail population during the summer and fall of 1982 as a smoke screen behind which to hide their own lack of effort to comply with the Decree (see Pet. App. 13a).

The question whether the court of appeals properly affirmed the denial of the motion to modify is also inappropriate for review, because to reverse that decision, this Court would have to address state law issues that were never addressed below. See Wolf v. Weinstein, 372 U.S. 633, 636 (1963). The question whether double bunking of Division I violated Illinois law was fully briefed before the court of appeals, which, however, had no occasion to reach it. 12/ But to reverse the court of appeals' decision, this Court would be required to reach this question; for when modification of a consent decree would vio-

(footnote continued)

sleeping on the floor on April 9, 1982, the day the decree was approved (Stmt. ¶ 5). As of March 15, 1983, the total Jail population was 4703 with 240 inmates sleeping on the floor (Stmt. ¶ 19).

12/ The district court also did not address this question. Neither the enforcement order, nor the order denying the motion to modify were based in any way upon state law (Pet. App. A and B). See Pennhurst State School and Hospital v. Halderman, 52 U.S.L.W. 4155 (U.S. Jan. 23, 1984) (No. 81-2101) (voiding, as violative of the eleventh amendment, federal court injunction against state officials, to enforce state law). Pennhurst in no way supports the course petitioners implicitly urged upon the district court here: an order authorizing them to violate an unchallenged and indisputably valid state law.

late federal or state law, as respondents argue is so here, 13/ that surely requires denial of modification. See United States v. Georgia Power Co., 634 F.2d 929, 937 (5th Cir. 1981).

B. Whether The Court Of Appeals Properly Affirmed The Enforcement Order Presents No Question Of Federal Law Worthy Of This Court's Review.

Petitioners' challenge to the enforcement order is predicated upon a distorted account of what the district court did. Petitioners argue that the district court found double

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13/ In the court of appeals, respondents argued that the Illinois County Jail Standards 8-1(A) and 8-2 forbade the double bunking petitioners sought. See 4 Ill. Admin. Reg. 189, 206 (July 11, 1980). Petitioners did not deny that the Standards did forbid such double bunking, but contended that Cook County, through its state law "home rule" status was not subject to the requirements of the County Standards. They make the same claim here, citing Ill. Const. art. VII, § 6(a) and Rozner v. Korshak, 55 Ill. 2d 430, 435, 303 N.E.2d 389, 391-92 (1973). This brief is not an appropriate vehicle for responding to that contention at any length, which implicates an arcane area of Illinois law. See Hutchcraft Van Service, Inc. v. City of Urbana Human Relations Comm., 104 Ill. App. 3d 817, 822-3, 433 N.E.2d 329, 333 (1982). We note only that Korshak, a tax case, involved a portion of the state home rule provision (Ill. Const. art. VII, § 6(g)) not even petitioners claim is at issue here. The provision that is principally relevant here, Ill. Const. art. VII, § 6(h), provides for the "exclusive exercise by the State of any power or function of a home rule other than a taxing power ...." Exercising exclusive state-wide power is just what the Illinois legislature did here in directing the State Department of Corrections to promulgate statewide jail standards, including those applicable to county jails. See Ill. Rev. Stat. ch. 38, § 1003-15-2 (1981).

As petitioners note (Pet. 15, n.*), the Illinois legislature has recently amended several provisions relating to the administration of Illinois correctional facilities. But any suggestion that the amendments free petitioners from state law obligations not to double bunk Division I is not well founded. The first amendment they cite relates only to state prisons, not county jails; and the second, while modifying the State Department of Corrections' authority respecting space standards, leaves intact its authority -- still exercised at 4 Ill. Admin. Reg. 189, 206, § 8-2 -- to prohibit double bunking.

bunking at the Jail to be constitutionally prohibited 14/ and ordered the release of detainees to enforce that constitutional finding (Pet. 14-15). In fact, the district court entered the enforcement order to remedy substantial noncompliance with a consent decree, and then only as a last resort after petitioners had squandered almost a year of opportunities to comply with that order -- and their own promises. Petitioners argue further that the enforcement order frustrates the operation of the state bail system, and involves the district court in ongoing supervisory management of the Jail (Pet. 14-15, 18-19). But this part of their account also is wrong.

Petitioners' account of the case seeks to invalidate the enforcement order by reference to well established judicial restraints on the exercise of federal equity power. See, e.g., Washington v. Washington State Commercial Passenger Fishing Vessel Association, 443 U.S. 658, 695-96 (1979); Hutto v. Finney, 437 U.S. 678, 687-88, 690-91 (1978); Dayton Board of Education v. Brinkman, 433 U.S. 406, 419-420 (1977); Milliken v. Bradley, 433 U.S. 267, 280-81 ("Milliken II") (1977); Swann v. Charlotte Mecklenburg Board of Education, 402 U.S. 1, 15-16 (1971); Younger v. Harris, 401 U.S. 37, 43-46 (1971). This Court ordinarily describes these restraints as ones grounded in traditional "equitable" considerations. See, e.g., Milliken II, Swann. In appropriate cases equitable considerations interact with principles of federalism, Doran v. Salem Inn, Inc., 422 U.S. 922, 928 (1975); and this Court in fact often speaks of "equitable" and "federalism" principles in similar terms. See Rizzo v. Goode, 423 U.S. 362, 377-80 (1976). The principles of

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14/ That is the clear implication of petitioners' contention that "[t]he Decision of the Court of Appeals conflicts with this Court's approval of inmate double bunking in Bell v. Wolfish, 441 U.S. 520 (1979)" (Pet. 14).

federalism do seem to have limited application, however, when, as in this case, the persons against whom the court's equitable power is directed are being held less to the command of the federal court than to their own promises, here embodied in a "plan," i.e., the Consent Decree, they themselves had helped "initially devise." Bell v. Wolfish, 441 U.S. 520, 562 (1979).

The question of federal law that petitioners -- in seeking review of the enforcement order -- present is thus one that invites this Court simply to reexamine the court of appeals' application of these well-settled principles of law to the facts of this case. But there is no real argument why this invitation carries with it an "important question of federal law which ... should be ... settled by this Court," Sup. Ct. R. 17.1(c), beyond the insistence that petitioners are aggrieved by that decision. Virtually any party who has suffered a defeat in the court of appeals can make this type of argument. To secure this Court's review, petitioners must present a more substantial reason, at least in the absence of a very clear showing that the principles governing the exercise of a federal court's remedial power were ones that first the district court, and then the court of appeals, substantially transgressed.

Petitioners make no such showing, or anything close to it. Nor does the record permit them to do so. The enforcement order in no way violated the restraints the decisions of this Court, see Washington, Hutto, Brinkman, Milliken II, Swann, Younger, placed upon the district court. It offers, rather, a model of accommodation with them.

First, when the district court entered the enforcement order, it was presented with a clear pattern of longstanding, continuing, and substantial noncompliance with the Consent Decree (Stmt. ¶ 6 n.4). Petitioners themselves do not dispute this. While they insist, incorrectly (see n.15, infra) that

they vigorously attempted to alleviate overcrowding at the Jail, they never argue that anything they did was effective.

Second, notwithstanding this noncompliance, the district court acted with great forbearance. The enforcement order was issued a full year after entry of the Decree that required prompt implementation, five and one-half months after the Monitors found petitioners in noncompliance, and four and one-half months after the district court invited petitioners to develop a workable remedy (Stmt. ¶ 8). Petitioners had many opportunities to comply with the Decree. But contrary to their claim that they "attempted at every stage to alleviate the overcrowding problem" (Pet. 15), they did little, if anything, before or after the entry of the order they now challenge, 15/ and nothing they did took the detainees off the concrete floors or promised to relieve overcrowding shortly (Stmt. ¶¶ 19, 20). Petitioners did not even authorize construction of their vaunted new jail facility until March 21, 1983 (Stmt. ¶ 20). That authorization was action which, if taken when the increase in the Jail population first became apparent in the summer of 1982, might have ensured that, just a day before the district court entered the enforcement order, petitioners might have been in full compliance with the Decree, or full compliance would have been imminent. Nor, except to promise to build a new facility, did petitioners follow the principal recommendations of their own consultants (see Defendants Status Report Exhibit 3,

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15/ Petitioners' list a series of things they did to ease overcrowding at the Jail (Pet. 11). But none of these occurred before the January 25, 1983 order (Defendants' Status Report 2/10/83). The only earlier constructive step petitioners had taken was to provide, in December 1982, blankets and mattresses to the detainees (Pet. 10); Defendants' Response to Petition for Rule 12/1/82 at 1). Until then hundreds of detainees were sleeping on the floor without mattresses or blankets, a situation that had prevailed since the previous April (Stmt. ¶ 6; n. 4, supra.).

2/11/83, at 25-34).

Third, the enforcement order was precise and limited in scope. It reached only as far as necessary to cure the continuing breach of the Consent Decree. Petitioners were required to release only the number of detainees sufficient to ensure that the Jail population would not exceed the limits of the Consent Decree itself, as set forth in the January 25th Order (Stmt. ¶ 11). Compliance with the Consent Decree renders the enforcement order inoperative.

Fourth, the enforcement order does not involve the court in the day-to-day administration of the Jail. Indeed, it does not involve any judicial supervision at all. The parties measure compliance from the Director's Daily Logs (see n.3, supra), and the cure for noncompliance is defined and easily verifiable.

Fifth, the enforcement order was carefully crafted to leave petitioners the greatest possible administrative discretion. Petitioners quarrel with the standard of releasing those detainees held on the lowest bond (Pet. 19). Yet the district court invited petitioners to set different standards before the effective date of the order (Pet. App. 4b) and that option is still available to them.

Petitioners argue that the enforcement order is a usurpation of their authority to "initally devise" a remedy for the conditions at the Jail, citing Bell v. Wolfish, 441 U.S. 520, 562 (1979), to the effect that "the first question to be answered is not whose [remedial] plan is best, but in what branch of the Government is lodged the authority to initially devise the plan" (Pet. 14). And they assert that the petition is one that "invites the Court to reaffirm" that course as its "direction" (id.). What petitioners fail to acknowledge, however, -- and their failure infects virtually every point they raise against the enforcement order -- is that the authority

they claim was usurped was exercised by them. It was not the district court, but petitioners who, in negotiating and agreeing to the Consent Decree, helped "initially devise the plan," Wolfish, 441 U.S. at 562, for remedying conditions at the Jail. In affixing their signatures to that Decree, petitioners agreed that their remedial "plan" was, under all the circumstances, desirable and capable of achievement. The district court approved that plan, i.e., the Consent Decree, on that basis; and it was only when petitioners continued to fail to follow their plan, after ample time to do so voluntarily, that the enforcement order was entered.

Petitioners' plan was, to be sure, one they tried to modify; and it is indeed the relief sought by that requested modification (double bunking of Division I), coupled with petitioners' promise to build a new Jail promptly, that is petitioners' principal "reason" (Pet. 16, 18) why the enforcement order was "wrong" (id. at 18). Double bunking and the promise to build a new Jail are thus referred to as "different sides of the same coin" that, together, should have "preclude[d]" the enforcement order (id. at 16).

But neither side of this coin is good. First, the modification of the Decree to permit double bunking in Division I was not one that the Fed. R. Civ. P. 60(b) standards required the district court to make, if they even permitted it (see pp. 13-14, supra). Indeed, for petitioners to argue that the proposal to double-bunk Division I is part of a "remedy" (see Pet. 4, 15, 18) disfigures the concept. For, understood as a proposal to modify the Consent Decree, it emerges simply as an attempt to skirt the very legal obligations petitioners' transgression of which obliged the district court to consider equitable remedies in the first place. Second, petitioners' promise promptly to build a new jail facility was an empty one. Almost

a year after they told the district court that they had authorized construction of such a facility, that construction would begin shortly and would take six to eight months to complete, construction has not begun.

Petitioners' failure even to begin construction of the new jail facility coupled with the decrease in the Jail's population (in early 1983) to a level that has persisted, places this case in quite a different posture than when it was before the district court. When the district court denied the motion to modify and entered the enforcement order, it did so over petitioners' plea that an "unprecedented" (Defendants' Motion for Modification 2/10/83) increase in the Jail's population justified modification of the Consent Decree to permit double bunking in Division I. Petitioners asserted that the modification would only be "short-term" (Defendants' Status Report 3/9/83, Exhibit D) because a new jail facility would be built shortly. Events have by now, however, quite definitively robbed petitioners' plea of any vitality. There has been, in fact, no relevant increase in the Jail's population and, if the district court had permitted double bunking of Division I, there would have been nothing "short term" about it. That part of the Jail would remain double bunked today, and, insofar as any progress in the actual construction of the new jail facility would suggest, it would remain double bunked indefinitely. 16/

16/ Petitioners acknowledge that the "County's plans to construct a 500 bed facility suffered a setback in the fall of 1983, when the low bidder for the project was ... disqualified" (Pet. 3, n.*). But the delay in construction of the new jail facility is in fact more substantial than that concession would suggest. As of the date of submission of this brief, there is still no builder under contract to build the jail. This is an obvious source of discomfort for petitioners (id.). But the (uncertain) prospect of completion of a new jail facility at any time in the next year or so carries with it a different type of discomfort

(footnote continued on page 22)

Petitioners argue that the "release order substitutes a truncated federally imposed recognizance scheme in place of Illinois' bail bond system ... [established by] the Illinois General Assembly" (Pet. 18). 17/ The enforcement order does not involve any such substitution. The order itself is not directed in any way against the state bail statute (cited at Pet. 18 n. *); and neither that statute nor the operation of the state court bail system have ever been at issue in this case. The suggestion that the enforcement order was predicated upon "dissatisfaction with the state court bail system" (Pet. 19), or indeed involved any determination respecting it or state bail legislation, is thus without any support in the record, and petitioners cite none. As the court of appeals recognized (Pet. App. 11a-13a), that order was predicated solely upon petitioners' continuing noncompliance with the Consent Decree.

(footnote continued)

for them, so far as it affects whether this case is appropriate for review. Petitioners present the construction of a new jail facility as making very unlikely any continuing violations of the Consent Decree and as remedying the effects of past noncompliance (Pet. 3-4, 15, 18). If petitioners are correct, however, this case may become moot. See City of Los Angeles v. Davis, 440 U.S. 625, 631 (1979). Petitioners are thus in the curious position of predicating their plea to this Court for review upon an event (the prospective completion of a new jail facility) that, if it elicits this Court's interest in review, also holds a promise of eliminating the need for or possibility of that review.

17/ When this case was before the court of appeals, petitioners pressed the argument that the enforcement order unduly interferred with the merits of the state court criminal prosecutions. See Younger v. Harris, 401 U.S. 37 (1971). The court of appeals rejected that contention (Pet. App. 10a-13a). Petitioners now virtually abandon the argument, and at one point appear to disavow it (Pet. 18-19). What remains (id. at 14), is definitively rebuffed by this Court's unanimous decision in Gerstein v. Pugh, 420 U.S. 103, 108 n.9 (1975). For here, as in Gerstein, "[t]he injunction was not directed at the state prosecution as such, but only at ... an issue that could not be raised in defense of the criminal prosecution ... [that] could not prejudice the conduct of the trial on the merits." Id.

The state bail system remains unaltered by the enforcement order. Both before and after entry of that order, bail is initially set for persons accused of crime, either pursuant to Ill. Rev. Stat. ch. 38, § 110-5 (1981) (judicial imposition of bail), or pursuant to Ill. Rev. Stat. ch. 16, § 81 (1981) (law enforcement officials' imposition of bail). The enforcement order has no play in the determination of bail made under these statutory provisions. Under the enforcement order, it is true, some detainees have been released from incarceration after bail was set; but that result was not one that the order directly or necessarily dictated. The enforcement order bears only upon detention in the Jail itself (Consent Decree 4/9/83; Pet. App. B). Petitioners retain the authority, under the Consent Decree, under the enforcement order, and under state law, to confine detainees in other facilities. See, e.g., Ill. Rev. Stat. ch. 75, § 10 (1981) (affording petitioners the option of remitting detainees to "jail" of "another county" if their "jail ... is insufficient"); Ill. Rev. Stat. ch. 75, § 24 (1981) (authorizing petitioners to pay for those facilities necessary "[to] keep[] and maintain[] [its] prisoners ..."). If there is any alteration in the operation of the state bail system, as petitioners posit, it is attributable to them. 18/

18/ Bereft of logical support for their argument that the enforcement order alters the state bail system, petitioners are reduced to quarrelling not with the idea of release itself, but with the standard for release. They suggest that detainees unable to satisfy low bond requirements are less likely than others to appear for trial if not confined (Pet. 19-20). There is no support in the record for this contention. More importantly, the notion that the amount of bail bears "no relationship" (id. at 19) to the likelihood of appearance at trial conflicts with the view of the Illinois legislature, as expressed in the bail statute (Ill. Rev. Stat. ch. 38, § 110-5 (1981)) to which petitioners profess their allegiance. See People v. Snow, 340 Ill. 464, 467, 173 N.E. 8, 9 (1930). And there is no support in the record for petitioners' suggestion (Pet. 19)

(footnote continued on page 24)

III. THERE IS NO CONFLICT BETWEEN THE COURT OF APPEALS' DECISION AND WOLFISH OR Di BUONO.

Petitioners argue that the court of appeals' decision conflicts with this Court's decision in Bell v. Wolfish, 441 U.S. 520 (1979), and with Union County Jail Inmates v. Di Buono, 713 F.2d 984 (3d Cir. 1983) as well (Pet. 14, 21). See Sup. Ct. R. 17.1(a), (c). This contention is wrong. Wolfish addressed the scope of the constitutional rights of pretrial detainees, 441 U.S. at 523, and this Court held that double bunking in the context of all the conditions at a particular detention facility violated no constitutional commands. Id. at 543. Following Wolfish, the Third Circuit concluded that, in the context of the totality of the Union County Jail conditions, one defendant's proposed double bunking remedy passed "constitutional muster." Di Buono, 713 F.2d at 996. Neither Wolfish nor Di Buono concerned the issue presented here -- the scope of a federal court's remedial power to enforce a valid and binding consent decree, in which petitioners had agreed to provisions limiting severe overcrowding. The district court here merely enforced such an agreement, and Wolfish and Di Buono thus have no application.

Only petitioners' obfuscation of the Consent Decree, "hammered out after lengthy negotiations between the parties" (Pet. 6), permits them to argue to the contrary. Citing Wolfish, 401 U.S. at 562, they say that the question presented here is "whether the district court has, indeed, made an in-

(footnote continued)

that those released under the district court order had been confined under high bail requirements. The record indicates that all those released have been confined for failure to meet very low ($35-$200) bonds (Stmt. ¶ 6).

correct 'judgment call' in an area 'confined [sic 19/] to officials outside the Judicial Branch of Government'" (Pet. 20). But the "judgment call" here did not concern the constitutionality of conditions at a jail, as in Wolfish and Di Buono; it concerned modification and enforcement of a consent decree.

Petitioners' nevertheless assert that Di Buono "reversed a release order [ ] in precisely the same context of local jail overcrowding in the face of a consent decree ...." (Pet. 21). But in Di Buono, the defendant that had proposed double bunking was not a party to a consent decree, 713 F.2d at 988, and those defendants who were parties to a consent decree were obliged to discharge their duties under it. Id. at 989-90. 20/

The orders petitioners seek review of here arose from their failure to comply with a "plan," Wolfish, 441 U.S. at 562, that they themselves had helped "devise," Id., which they promised to obey, and were then bound to obey when the district court approved and entered the Decree. When petitioners broke their promises, and so violated their obligations under the Decree, they asked the district court to be released from their promises and that Order. But promises should be kept and court

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19/ The word in the opinion is "confided."

20/ The difference between petitioners and the Di Buono appellant is not limited to the presence of a binding and valid consent decree. Petitioners here were in violation of the Consent Decree for over nine months, before they finally took any action at all to remedy their non-compliance with the Decree (see n.15, supra); what they then did was ineffective and what they proposed to do, illusory (n.16, supra). In contrast to petitioners' recalcitrance, the Di Buono appellant "ha[d] in due course and in evident good faith come forward at the earliest opportunity with a remedial scheme to cure the violations ...." 713 F.2d at 1002.

orders obeyed, unless there are awfully good reasons why not. Exercising its discretion, the district court found that there were no such reasons, and no argument has been presented here that should prompt this Court to review the court of appeals' judgment affirming that decision.

CONCLUSION

The Petition for Certiorari should be denied.

Respectfully submitted,

Robert E. Lehrer

ROBERT E. LEHRER
One of the Attorneys for Respondents

RUTHANNE DeWOLFE
RICHARD J. HESS
LESLIE ANN JONES
ROBERT E. LEHRER
Legal Assistance Foundation
of Chicago
343 South Dearborn Street
Chicago, Illinois 60604
(312) 341-1070

Attorneys for Respondents

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

October 6, 1983

Before

Hon. HARLINGTON WOOD, JR., Circuit Judge

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. ROBERT A. GRANT, Senior District Judge*

DAN DURAN, et al.
Plaintiffs-Appellees,

No. 83-1574 vs.

RICHARD ELROD, et al.
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 74 C 2949
Milton I. Shadur, Judge.

O R D E R

On consideration of the petition for rehearing and suggestion for rehearing in banc filed in the above-entitled cause by the defendants-appellants, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing.

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

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*The Honorable Robert A. Grant, Senior District Judge of the United States District Court for the Northern District of Indiana, sitting by designation.

EXHIBIT A

NOTARIZED STATEMENT OF MAILING

RICHARD JAY HESS, being duly sworn, deposes and says that he is one of the attorneys for respondents, and is a member of the bar of this Court; and that on February 24, 1984, and to his knowledge, one (1) original and ten (10) copies of Respondents' Brief in Opposition to Petition for a Writ of Certiorari and copies of Respondents' Motion to Proceed In Forma Pauperis were deposited in a United States mailbox at 343 South Dearborn Street, Chicago, Illinois 60604, with first class postage prepaid, properly addressed to Alexander L. Stevas, Clerk, United States Supreme Court, Supreme Court Building, Washington, D.C. 20543.

Richard Jay Hess
RICHARD JAY HESS

SUBSCRIBED AND SWORN to
before me this 24th day
of February, 1984.

Barbara M Moore
NOTARY PUBLIC

CERTIFICATE OF SERVICE

RICHARD JAY HESS certifies that he is one of the attorneys for respondents and that on February 24, 1984, two (2) copies of Respondents' Brief in Opposition to Petition for a Writ of Certiorari and two (2) copies of Respondents' Motion to Proceed In Forma Pauperis were served upon the attorney for all petitioners: Richard J. Daley, State's Attorney of Cook County, 500 Richard J. Daley Center, Chicago, Illinois, Attn: Henry A. Hauser. Service was made by depositing these copies in a United States mailbox at 343 South Dearborn Street, Chicago, Illinois 60604, first class postage prepaid, properly addressed to Richard J. Daley, Esq.

Richard Jay Hess

RICHARD JAY HESS

Supreme Court, U.S.
FILED
FEB [illegible]
ALEXANDER L. STEVAS
CLERK

NO. 83-1082

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

RICHARD J. ELROD, Sheriff of Cook County, et al.,

Petitioners,

-vs-

DAN DURAN, et al.,

Respondents.

RESPONDENTS' MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Respondents, pursuant to Sup. Ct. R. 46.1, and for the reasons stated in the attached affidavit, move for leave to proceed in forma pauperis before this Court. Respondents, a class of pre-trial detainees at the Cook County, Illinois jail, sought leave to proceed in forma pauperis before the United States District Court for the Northern District of Illinois; and on October 25, 1974 this motion was granted.

Respectfully submitted

Robert E. Lehrer
ROBERT E. LEHRER
One of the Attorneys for Respondents

RUTHANNE DeWOLFE
RICHARD J. HESS
LESLIE ANN JONES
ROBERT E. LEHRER
Legal Assistance Foundation
of Chicago
343 South Dearborn Street
Chicago, Illinois 60604
(312) 341-1070

Attorneys for Respondents

NO. 83-1082

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1983

RICHARD J. ELROD, Sheriff of Cook County, et al.,

Petitioners,

vs.

DAN DURAN, BRUCE JOHNSON, ROBERT O'BRIEN, AL SANA CARUTH, JOHN NORMAN, and DREXEL HOLLAND, individually and on behalf of all others similary situated.

Respondents.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED AS RESPONDENT IN FORMA PAUPERIS

I, BRUCE JOHNSON, being first duly sworn, depose and say that I am one of the named plaintiffs and class representatives in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or giving security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefcr; that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of responding to petitioners' Petition For A Writ of Certiorari are true.

1. Are you presently employed? No

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

   b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. 4/66 $150 wk. ($264 mo)

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? No

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? no

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? no

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons. no

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Bruce Johnson
BRUCE JOHNSON

SUBSCRIBED AND SWORN
to before me this
15 day of February
1984.

NOTARY PUBLIC

My Commission Expires August 15, 1984